

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

ANTHONY LEWIS,) 3:10-cv-00497-ECR-VPC
)
Plaintiff,) MINUTES OF THE COURT
)
vs.) DATE: August 10, 2012
)
A. STANKUS, et al.,)
)
Defendant(s).)
)
_____)

PRESENT: _____ EDWARD C. REED, JR. _____ U. S. DISTRICT JUDGE

Judicial Assistant: _____ Candace Knab _____ Reporter: _____ NONE APPEARING

Counsel for Plaintiff(s) _____ NONE APPEARING

Counsel for Defendant(s) _____ NONE APPEARING

MINUTE ORDER IN CHAMBERS

On May 30, 2012, the Magistrate Judge filed a Report and Recommendation (#69) recommending that Defendants' motion for summary judgment (#54), filed on December 30, 2011, be granted. No objections were filed.

The Magistrate Judge's Report and Recommendation is well taken and approved. With regard to Plaintiff's Eight Amendment claim, the Court finds that the use of force did not result in the unnecessary and wanton infliction of pain or suffering. The extent of Plaintiff's injury was minimal, Plaintiff repeatedly disobeyed orders to remove his hand from the food slot and attempted to grab Stankus' hand and flashlight, the amount of force used was minimal and necessary, and the evidence does not otherwise support an inference of wantonness. Defendants are therefore entitled to judgment as a matter of law pursuant to Hudson v. McMillian, 503 U.S. 1 (1992).

As to Plaintiff's First Amendment retaliation claim, the evidence shows that Defendants were not involved in the decision to transfer Plaintiff to another facility. Because "liability under [§] 1983 arises only upon a showing of personal participation by the defendant," Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989), Plaintiff has failed to establish the existence of an essential element of his claim. Defendants are therefore entitled to judgment as a matter of law on Plaintiff's First Amendment claim.

IT IS, THEREFORE, HEREBY ORDERED that the Magistrate Judge's Report and Recommendation (#69) is well taken and is APPROVED and ADOPTED.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (#54) is **GRANTED**.

The Clerk shall enter judgment accordingly.

LANCE S. WILSON, CLERK

By /s/
Deputy Clerk